

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE DEPARTMENT OF REVENUE

In the Matter of the Revocation of the  
Sales and Use Tax Permit of Upton  
Health & Nutrition LLC

FINDINGS OF FACT,  
CONCLUSIONS AND  
RECOMMENDATION

This matter was scheduled for hearing on June 5, 2008, before Administrative Law Judge Beverly Jones Heydinger, at the Office of Administrative Hearings. The hearing was held pursuant to a Notice and Order for Hearing dated March 5, 2008, signed by Ronald L. Schwagel. Wayne Sather, Attorney, Mail Station 2220, 600 North Robert Street, Saint Paul, MN 55146-2220, appeared for the Department of Revenue. There was no appearance on behalf of Upton Health & Nutrition LLC. The hearing record closed on June 5, 2008, upon the default of Upton Health & Nutrition LLC.

NOTICE

This Report is a recommendation, not a final decision. The Commissioner of Revenue will make the final decision after a review of the record and may adopt, reject or modify these Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Ward Einess, Commissioner, Minnesota Department of Revenue, 600 North Robert Street, Saint Paul, MN 55146 to ascertain the procedure for filing exceptions or presenting argument.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

Pursuant to Minn. Stat. § 14.62, subd. 1, the Department is required to serve its final decision upon each party and the Administrative Law Judge by first class mail.

### STATEMENT OF ISSUES

1. Did Upton Health & Nutrition LLC file all sales and use tax returns due to the State of Minnesota?
2. Did Upton Health & Nutrition LLC pay all sales and use tax due to the State of Minnesota?

Summary: The Administrative Law Judge concludes that Upton Health & Nutrition LLC is in default, the allegations in the Notice and Order for Hearing are accepted as true, and recommends that the Commissioner revoke the sales tax permit issued to Upton Health & Nutrition LLC, pursuant to Minn. Stat. § 270A.722.

Based upon all of the files, records and proceedings herein, the Administrative Law Judge makes the following:

### FINDINGS OF FACT

1. Upton Health & Nutrition LLC (Upton Health) holds a Sales and Use Tax Permit, I.D. Number 7815430, issued by the Minnesota Department of Revenue.
2. On March 5, 2008, the Department of Revenue (Department) served a Notice and Order for Hearing on Upton Health, via first class mail to the address on file with Department, as appears from the Affidavit of Mailing to Last Known Address.<sup>1</sup>
3. On March 11, 2008, the Administrative Law Judge sent information to Upton Health restating the date of the hearing, April 9, 2008. The letter was not returned to the Office of Administrative Hearings as not deliverable.
4. On April 8, 2008, the Administrative Law Judge received a request by telephone from Stanley Cutts, proprietor of Upton Health, requesting that the hearing be continued to allow Upton Health an opportunity to work out a repayment plan with the Department. The request was granted.
5. On April 14, 2008, the Administrative Law Judge sent a letter to Upton Health rescheduling the hearing for June 5, 2008, and requesting that Mr. Cutts complete the Notice of Appearance if he intended to appear at the hearing. The letter was not returned to the Office of Administrative Hearings.

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<sup>1</sup> See Minn. Stat § 270C.38.

6. Upton Health failed to appear at the hearing, did not obtain the Administrative Law Judge's prior approval to be absent from the hearing, did not file a Notice of Appearance, and did not request a continuance or any other relief.

7. The Notice and Order for Hearing contained the following informational warning:

The Respondent's failure to appear at the hearing may result in a finding that the Respondent is in default, that the Department's allegations contained in this Notice and Order may be accepted as true, and its proposed action may be upheld.

8. The Department alleged that Upton Health had failed to file the required sales and use tax returns and failed to pay all sales and use tax due to the State of Minnesota. As of March 5, 2008, the total amount owed for sales tax, penalty, interest and other charges was \$2,288.32, with penalty and interest continuing to accrue, as appropriate.

9. Because Upton Health failed to appear, it is in default.

10. Pursuant to Minnesota Rules, part 1400.6000, the allegations contained in the Notice and Order for Hearing are taken as true and incorporated by reference into these Findings of Fact.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

### CONCLUSIONS

1. The Commissioner of Revenue and the Administrative Law Judge have jurisdiction in this matter.<sup>2</sup>

2. The Department gave proper notice of this hearing and complied with all relevant procedural requirements.

3. Under Minn. R. 1400.6000, a contested case may be decided adversely to a party who defaults. On default, the allegations and the issues set out in the Notice and Order for Hearing or other pleading may be taken as true or deemed proved without further evidence.

4. Upton Health is in default herein as a result of its failure, without the Administrative Law Judge's prior consent, to appear at the hearing.

5. By failing to file all sales and use tax returns required by law, Upton Health is in violation of Minn. Stat. § 289A.11.

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<sup>2</sup> Minn. Stat. §§ 14.55, 270C.722.

6. By failing to pay required sales and use taxes, Upton Health is in violation of Minn. Stat. § 289A.20, subd. 4.

7. Pursuant to Minn. Stat. § 270C.722, the Commissioner has the authority to issue an order of revocation of Upton Health's sales tax permit for violations of the sales and use tax provisions of chapter 289A.

8. Any Findings of Fact that are more appropriately described as Conclusions are adopted as Conclusions.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

#### RECOMMENDATION

IT IS HEREBY RECOMMENDED: that the Department's decision to revoke the sales tax permit of Upton Health & Nutrition LLC should be AFFIRMED.

Dated this 9th day of June, 2008

s/Beverly Jones Heydinger

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BEVERLY JONES HEYDINGER  
Administrative Law Judge

Not Reported: Default.